

1 John G. Balestriere*
2 Matthew W. Schmidt (Cal. Bar No. 302776)
3 **BALESTRIERE FARIELLO**
4 225 Broadway, 29th Floor
5 New York, New York 10007
6 Telephone: (212) 374-5401
7 Facsimile: (212) 208-2613
8 john.balestriere@balestrierefariello.com
9 matthew.schmidt@balestrierefariello.com
10 *Admitted Pro hac vice

11 Anastasia Mazzella (Cal. Bar. No. 245201)
12 **KABATECK LLP**
13 633 West Fifth Street, Suite 3200
14 Los Angeles, California 90071
15 Telephone: (213) 217-5007
16 Facsimile: (213) 217-5010
17 am@kbklawyers.com
18 Attorneys for Plaintiffs

19
20
21
22
23
24
25
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

19 **JULIA HUBBARD, et al.,**
20 Plaintiffs,
21 –against–
22 **TRAMMELL S. CROW, JR., et al.,**
23 Defendants.
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Case No.: 2:22-cv-7957-FLA-MAA

**PLAINTIFFS' RESPONSE TO
ORDER TO SHOW CAUSE WHY
ACTION SHOULD NOT BE
TRANSFERRED**

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PRELIMINARY STATEMENT¹

This matter should remain in the United States District Court for the Central District of California, where proper venue exists, where Plaintiffs properly brought this action, and where jurisdiction over all Defendants exists.

Transfer under 28 U.S.C. § 1404(a) (“Section 1404(a)”) is inappropriate, first, because courts grant substantial deference to a plaintiff’s choice of forum, and there is no substantial benefit to the convenience of the parties or expected witnesses by transferring to a District Court in Texas. Fourteen defendants have now been served, and nine have already appeared in this action represented by California counsel. And as set forth in further detail in Plaintiffs’ oppositions to the motions to dismiss of the seven Defendants who moved on jurisdictional grounds (Dkt. Nos. 50, 55, 72, 76, 83, 102, 105), each are properly subject to the jurisdiction of this Court. Indeed, under the multi-factor test used in this District to evaluate Section 1404(a) transfers, most factors weigh against transfer and the remaining factors are neutral.

If the Court does deem it appropriate to transfer under Section 1404(a), it should do so to the United States District Court for the Northern District of Texas (“Northern District of Texas”), where the majority of Defendants reside. There exists no other proper venue for transfer. The closest potential alternative venue, the United States District Court for the Western District of Texas (“Western District of Texas”), which includes the city of Austin, is inappropriate because Dallas is more convenient to the parties and potential witnesses, as well as a more substantial center of gravity of this action compared to Austin.

This case can and should stay in this Court, where it was properly brought and should remain. Or, if it is transferred, it should be transferred to the Northern District of Texas.

¹ All capitalized terms are defined in the Complaint, Dkt. No. 1 (the “Complaint” or “Compl.”). Some terms are redefined herein for the Court’s convenience.

ARGUMENT

I. THIS CASE SHOULD REMAIN IN THIS DISTRICT, WHERE PLAINTIFFS BROUGHT THIS ACTION AND WHERE PROPER VENUE LIES

This matter should remain in this District and not be transferred. In determining whether transfer under Section 1404(a) is appropriate in a matter not governed by a contract, a court weighs “multiple factors,” including (i) the state “most familiar with governing law,” (ii) the “plaintiff[s]’ choice of forum,” (iii) the respective parties’ “contacts with the forum,” (iv) “contacts” relating to the plaintiffs’ cause of action in the chosen forum, (v) “differences in cost of litigation” in the competing fora, (vi) the availability of “compulsory process to compel attendance of unwilling non-party witnesses,” and (vii) the “ease of access” to “sources of proof.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000) (affirming denial of transfer despite existence of forum selection clause); *Allstar Mktg. Grp., LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1131–34 (C.D. Cal. 2009) (rejecting transfer after analysis of factors).

First, this District is more familiar with the TVPA than any alternative district in Texas, having heard more than twice as many cases under 18 U.S. Code § 1591 than either the Northern or Western Districts of Texas. (Declaration of Matthew W. Schmidt (“Schmidt Decl.”) ¶ 2.) According to a Westlaw search, this District has decided 44 cases involving the TVPA, compared to only 19 in the Northern District of Texas and 18 in the Western District of Texas. (Schmidt Decl. ¶ 3.) Especially given the relatively novel status of such litigations, this District’s superior experience supports the interests of justice and is reason alone to keep this action in this District. This factor weighs against transfer to Texas.

Second, Plaintiffs brought suit in this District (Dkt. No. 1), and that choice should be respected. *See Jones*, 211 F.3d at 498 (recognizing plaintiffs’ choice of forum as factor). This factor weighs against transfer.

1 Third and fourth, all relevant parties have contacts relevant to Plaintiffs' causes
 2 of action with both California and Texas, making this factor neutral, such that it does
 3 not mitigate towards transfer. As discussed at length in Plaintiffs' opposition to the
 4 Texas plaintiffs who have moved to dismiss on jurisdictional grounds (Dkt. Nos. 50,
 5 55, 72, 76, 83, 102, 105), all Plaintiffs have substantial contacts with the State of
 6 California due to the presence of Defendant Eller, a key part of the Venture, in this
 7 District. (Schmidt Decl. ¶ 4.) All Defendants either knew or recklessly disregarded
 8 the presence of Eller in California and his key role in the Venture, thus purposefully
 9 directing activity to the district from which Plaintiffs' claims arise. (Schmidt Decl.
 10 ¶ 5.) This factor is neutral and does not weigh in favor of transfer.

11 Fifth, the cost of litigation in either this District or Texas is likely the same,
 12 making this factor weigh against transfer or, at least, neutral. All nine Defendants
 13 who have appeared in this litigation have retained California counsel, and nine have
 14 already filed motions to dismiss in this action. (Dkt. Nos. 26, 50, 55, 72, 76, 83, 93,
 15 102, 105.) Nor does travel from Texas to Los Angeles present any burden: to the
 16 extent that travel is necessary, flights from Dallas to Los Angeles are typically under
 17 \$300 and only about three hours. (Schmidt Decl. ¶ 6.) This factor weighs against
 18 transfer.

19 Sixth and seventh, there are no currently known non-party witnesses who
 20 could not be compelled to testify in this District, nor issues with ease of access to
 21 sources of proof. Access to witnesses and evidence add "little weight" to an analysis
 22 unless a party specifically identifies witnesses and evidence in potential new forum.
 23 *Allstar Mktg. Grp., LLC*, 666 F. Supp. 2d at 1133 (finding location of non-party
 24 witnesses and evidence bear little weight in transfer absent specific identification as
 25 to such witnesses and evidence). Plaintiffs are unaware of any such evidence that
 26 would create such a burden, particularly given the digital nature of expected
 27 discovery. These factors weigh against transfer.

28 All the relevant factors considered under Section 1404(a) weigh against, or at

1 worst are neutral, to transfer. This action should stay in this District.

2 **II. IF THE COURT DOES TRANSFER THIS ACTION UNDER SECTION**
 3 **1404(a), IT SHOULD TRANSFER THIS ACTION TO THE**
 4 **NORTHERN DISTRICT OF TEXAS, WHERE A MAJORITY OF**
 5 **DEFENDANTS RESIDE**

6 If the Court does deem fit to transfer this action under Section 1404(a), which
 7 it should not, the Court should transfer the action to the Northern District of Texas,
 8 where the majority of Defendants reside. Of the 29 defendants named in this action,
 9 20 of them—more than 70%—reside in the Northern District of Texas: Trammell S.
 10 Crow, Jr.; Dr. Joseph Bolin; Dr. Scott Woods; Dr. Mrugeshkumar Shah; Michael
 11 Cain; Coe Juracek; Phil Ecob; H.J. Cole; Kurt Knewitz; Paul Pendergrass; Robert
 12 Pruitt; Case Grover; Richard Butler; Michael Hynes, Jr.; Shawn Mayer; Jade Mayer;
 13 Integrity Based Marketing, LLC; Storm Fitness Nutrition, LLC; Ultra Combat
 14 Nutrition, LLC; Ecoloft Homes LLC; and Elevated Wellness Partners LLC. (Schmidt
 15 Decl. ¶ 7.)

16 Of the Defendants outside of the Northern District of Texas, only five—
 17 Richard Hubbard; Dr. Melissa Miller; Cody Mitchell; Ralph Rogers; and Scott
 18 Brunson—reside in the Western District of Texas. (*Id.*) Two Defendants—Mark
 19 Molina and RCI Hospitality Holdings, Inc.—reside in the United States District
 20 Court for the Southern District of Texas, and Dr. Benjamin Todd Eller resides in this
 21 District. (*Id.*)

22 Given that the substantial majority of Defendants reside in the Northern
 23 District of Texas—20 Defendants, versus only five in the second-most populated
 24 Western District of Texas—if this Court does deem fit to transfer this action out of
 25 this District (which, for the reasons set forth *supra* at I, it should not), it should make
 26 the transfer to the Northern District of Texas.

27 **CONCLUSION**

28 This case should remain in this District, where Plaintiffs properly brought suit

1 and where nearly all relevant factors weigh against transfer, and those that do not are
2 neutral, such that this case should stay in Plaintiffs' selected forum. Defendants—
3 most of whom have already secured California counsel, appeared in this action, and
4 already filed motions to dismiss—will not be prejudiced by litigation in this District,
5 nor is there likely evidence that will be difficult to procure in this District. Further,
6 this District has substantial experiences with the TVPA, a significant factor in
7 litigation under such a relatively new statute.

8 If the Court does deem fit to transfer, it should transfer to the Northern District
9 of Texas, where the vast majority—20 out of 29—of Defendants reside. There exists
10 no other District with such a substantial concentration of Parties, and to the extent
11 that Defendants assert that the location of evidence, witnesses, and convenience of
12 Parties mitigate against venue in this District, then the Northern District of Texas will
13 cure such complaints.

1 Dated: New York, New York

2 March 24, 2023

3
4 By: 

5 Matthew W. Schmidt

6 John G. Balestriere*

7 **BALESTRIERE FARIELLO**

8 225 Broadway, 29th Floor

9 New York, New York 10007

10 Telephone: (212) 374-5401

11 Facsimile: (212) 208-2613

12 john.balestriere@balestrierefariello.com

13 matthew.schmidt@balestrierefariello.com

14 **Admitted Pro hac vice*

15
16 Anastasia Mazzella

17 **KABATECK LLP**

18 633 West Fifth Street, Suite 3200

19 Los Angeles, California 90071

20 Telephone: (213) 217-5007

21 Facsimile: (213) 217-5010

22 am@kbklawyers.com

23 *Attorneys for Plaintiffs*

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on this date, the foregoing document filed electronically using the Court's CM/ECF System are served on counsel of record pursuant to the Federal Rules of Civil Procedure through the Court's Notice of Electronic Filing generated by the CM/ECF System, per L.R. 5-3.2.1.

Dated: New York, New York

March 24, 2023.

BALESTRIERE FARIELLO

By: 

Matthew W. Schmidt

Attorney for Plaintiffs